

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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ACCESS 4 ALL, INC., a Not-for-Profit  
Corporation , and FELIX ESPOSITO,  
Individually,

Plaintiffs,

v.

MASSACHUSETTS MUTUAL LIFE  
INSURANCE CO., a Massachusetts  
corporation,

Defendant.

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Case Number:04-12240-GAO

**PLAINTIFF'S INITIAL RULE 26 DISCLOSURE**

Plaintiffs, Felix Esposito and Access 4 All, Inc., by and through undersigned counsel, file their Initial Disclosures pursuant to Rule 26 (a) (1) of the Federal Rules of Civil Procedure.

A. The following individuals are known to Plaintiffs to be likely to have discoverable information relevant to disputed facts.

FELIX ESPOSITO, Plaintiff  
c/o Fuller, Fuller & Associates, P.A.  
12000 Biscayne Blvd., #609  
North Miami, FL 33141  
Subject: Barriers to access existing at the subject property.

ACCESS 4 ALL, INC.  
c/o Fuller, Fuller & Associates, P.A.  
12000 Biscayne Blvd., #609  
North Miami, FL 33141  
Subject: Barriers to access existing at the subject property.

ACCESS-ABILITY, INC.  
610 E. Sample Road  
Pompano Beach, Florida 33064  
Subject: Barriers to access existing at the subject property.

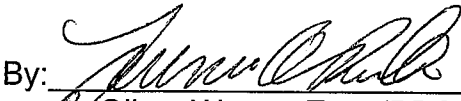
- B. Plaintiffs have made no claim for damages in this action.
- C. There are no insurance agreements relevant to this action.

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed on this December 17, 2004 to: Heather C. Krauss; EPSTEIN, PECKER & GREEN, P.C.; 111 Huntington Avenue, 26<sup>th</sup> Floor; Boston, Massachusetts 02199; Tel.: (617) 342-4001; Fax: (617) 342-4001.

The Plaintiffs by their Attorney:

**FULLER, FULLER & ASSOCIATES, P.A.**  
12000 Biscayne Blvd., Suite 609  
North Miami FL 33181  
Tel.: (305)891-5199; Fax: (305)893-9505  
[FFA@fullerfuller.com](mailto:FFA@fullerfuller.com)

By: \_\_\_\_\_

  
Oliver Wragg, Esq. (BBO #643152)  
Of Counsel

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Case Number:04-12240-GAO

**PLAINTIFF'S RULE 26 (a)(2) EXPERT WITNESS DISCLOSURE**

Plaintiffs, Felix Esposito and Access 4 All, Inc., by and through undersigned counsel, file their Expert Witness Disclosures pursuant to Rule 26 (a)(2) of the Federal Rules of Civil Procedure.

The following individuals have been retained by the Plaintiffs to provide expert testimony in the above matter. Their resumes are attached hereto as Exhibit "A". The Plaintiffs reserve the right to supplement the initial expert report attached hereto as Exhibit "B", pursuant to Fed.R.Civ.P. 26 (a)(2)(B), with a final report after a formal inspection of the property is completed.

- A. Access-Ability, Inc.  
Peter Spalluto  
610 E. Sample Road  
Pompano Beach, Florida 33064
- B. Access-Ability, Inc.  
Herbert Neff  
610 E. Sample Road  
Pompano Beach, Florida 33064

Peter Spalluto and Herbert Neff are licensed contractors and are expected to testify as to opinions and methods that are available for modifications and/or removal of barriers at the facility for the Defendant to bring the property into ADA compliance, and the costs to remedy the ADA violations. Peter Spalluto and Herbert Neff may also provide rebuttal testimony provided by Defendant's experts. It is not possible to disclose the substance of this testimony at this time as Defendant has not yet disclosed in detail the nature of its experts' testimony, and it has not provided Plaintiffs with a completed detailed report from said experts. Experts, Peter Spalluto and Herbert Neff of Access-Ability are compensated at the rate of \$175 per hour each.

C. Gary W. Dix, C.P.A., C.V.A.  
Mallah, Furman & Company, P.A.  
1001 South Bayshore Drive, Suite 1400  
Miami, Florida 33131

Gary Dix is a licensed, certified public accountant and is expected to testify as to the financial ability of the Defendant to bring the property into ADA compliance. Mr. Dix may also provide rebuttal testimony to that provided by Defendant's experts. It is not possible to disclose the substance of this testimony at this time as Defendant has not yet disclosed in detail the nature of its experts' testimony, and it has not provided Plaintiffs with a completed detailed report from said experts. Expert, Gary W. Dix of Mallah, Furman & Company, P.A. is compensated at the rate of \$300 per hour.

Qualifications of said experts are attached hereto as Exhibit "C", pursuant to Fed.R.Civ.P. 26 (a)(2)(B).

Plaintiffs reserve their right to supplement and modify these witness disclosures to the extent allowed by the Court and the applicable rules.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed on this December 16, 2004 to: Heather C. Krauss; EPSTEIN, BECKER & GREEN, P.C.; 111 Huntington Avenue, 26<sup>th</sup> Floor; Boston, Massachusetts 02199; Tel.: (617) 342-4001; Fax: (617) 342-4001.

The Plaintiffs by their Attorney:

**FULLER, FULLER & ASSOCIATES, P.A.**  
12000 Biscayne Blvd., Suite 609  
North Miami FL 33181  
Tel.: (305)891-5199; Fax: (305)893-9505  
[FFA@fullerfuller.com](mailto:FFA@fullerfuller.com)

By: 

Oliver Wragg, Esq. (BBO #643152)  
Of Counsel

OOW:tld (tld@fullerfuller.com)

Scheduling Report and Pro Hac Vice 3632.wpd

# **ACCESS-ABILITY, INC.**

*610 E. Sample Road, Pompano Beach, FL 33064*

*VOICE: (954) 942-1882 FAX (954) 781-1282*

*CGC # 0541895 FED ID # 650386560*

## **RESUME**

### **Peter A. Spalluto**

**1966**

- U.S. Army- diving accident resulting in (quadriplegia) wheelchair use.

**1968**

- Completed drivers training for physically impaired, Veterans Administration Hospital, Bronx, New York.

**1969**

- Founding member of the A.D.L. Clinic V.A. Hospital, East Orange, New Jersey.  
Reference: Barbara Odenthal, Chief Occupational Therapist.

**1972**

- Staff Researcher, Bioengineering Dept., Veterans Administration, Manhattan, New York.  
Reference: Ron Arrayo.
- Associate Builder P.L. 702 Home Total Access, Barrier Free Construction.  
Reference: Angelo Puzino, Wall Township, New Jersey.

## **EDUCATION**

**1966**

- New York City Community College, New York.  
Associates Degree, Hotel and Restaurant Technology.

**1973**

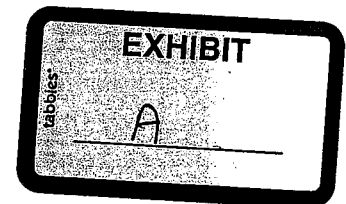
- Ocean County College, New Jersey.  
Associates Degree, Business Administration.

**1976**

- Monmouth College, New Jersey.  
Bachelor of Science Degree, Business Administration, Government and Psychology.
- Internship with Department of Alcoholic Beverages, Washington, D.C.

**1992**

- Certified Advanced Pedestrian Facilities Design Training Course of Florida Department of Transportation.



**1994**

- C.E.U. Accredited course, Florida Accessibility Code & The Americans with Disabilities Act Compliance Standards.

**2003**

- Universal Design and the New ADA/ABA Guidelines of Harvard University, Graduate School of Design.

**BUSINESS**

**1976**

- President, Long After Productions, Inc., Bricktown, New Jersey.  
Co-Developer, Local Original Programming, Crosswicks Cable, Point Pleasant, New Jersey.

**1977**

- Producer, C.A.T. Benihana Boat Race, Point Pleasant, New Jersey.

**1982-1989**

- Owner, Vending Company, President, Digits Dogs, Inc., Atlantic City, New Jersey.

**1990-1992**

- Research and Co-Owner for Barrier Free Systems, Inc., Fort Lauderdale, Florida.
- Sitting on the Americans with Disabilities Public Information Committee under the guise of Broward County Human Relations Division.
- President and Co-Owner Barrier Free Systems, Inc., Bricktown, New Jersey.

**1993- to Present**

- Founder/President - Access-Ability, Inc. Pompano Beach, Florida (Company specializing in Americans with Disabilities modifications and evaluations.)

**1994**

- Instructor- Broward Center for Independent Living, Peer Counselors Training Program/  
Led ADA Compliance Seminar.
- Member FPVA Advocacy Committee for the Disabled.

**1997- To Present**

- Expert Consultation for ADA Litigation.

**2003- To Present**

- Certified Accessibility Plan Inspector/Examiner by International Code Council.

**HERBERT J. NEFF**  
**2500 N. Federal Hwy. #223**  
**Boca Raton, Florida 33431**  
**Voice: (561)338-7594 Fax: (561)338-2903**

**SUMMARY:**

Diverse line and staff responsibility in financial, distribution, high-tech, real estate, and construction business operations provides broad perspective for business planning and development. Selected areas of performance include:

- Financial Planning
- Market Research and Analysis
- Sales/Customer Relations
- Presentations
- Construction Management
- Property Management
- Distribution Systems
- Inventory Control Systems
- Personnel Evaluation
- ADA Expert

**RECENT  
EXPERIENCE**

**General Contractor Qualifier for Access-Ability, Inc.**  
 Pompano Beach, Florida (1998 - Present)  
 Construction supervision, building permits, construction design, and ADA evaluations

**Independent Consultant as Americans with Disabilities Act (ADA) Expert**  
 Boca Raton, Florida (1998 - Present)  
 Representing plaintiffs and defendants re ADA violations

**Marketing Consultant, Advanced Aquatronics International, Inc.**  
 Lighthouse Point, Florida (1991 - Present)  
 Provide missionary service for new market areas and client types for high-tech water conditioning systems

**Executive Assistant to Director of Operations, Turnberry Associates**  
 Aventura, Florida (1985 - 1991) & (1980 - 1983)  
 Responsibilities included property development project administration, accounting/controlling, business planning, financial analysis, preparation of special reports.

**Independent Consultant (1983 - 1985)**  
 Provided management and financial counseling. Clients included Florida Business Centers, Peninsular General Builders, and executive search assignments to firms in Broward and Dade Counties, Florida.

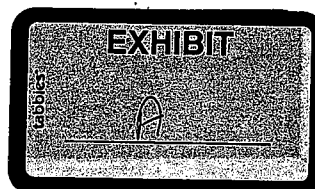
**Vice President, Barco Finance Corporation**  
 Miami, Florida (1979 - 1980)  
 Responsibilities included appraisal and evaluation of financing prospects in industrial, commercial, and real estate industries. Monitored borrowers' financial and operational conditions.

**Owner, H.J. Neff & Associates,**  
 Miami, Florida (1971 - 1978)  
 Consultant in business planning and executive search to real estate, commercial, and industrial firms.

**Manager, Corporate Planning, E-System, Inc.**  
 Dallas, Texas (1966 - 1970)  
 Coordinated five year plan for five operating divisions with 10,000 employees and total business of over \$200 million. Monitored R&E budgets of \$14 million. Reviewed merger and acquisition prospects.

**EDUCATION:**

A.B. cum laude in Economics, Harvard University  
 Armed Forces Institute, Business Seminars  
 Licensed Florida Real Estate Broker; Florida General Contractor





## ***ACCESS-ABILITY, INC.***

610 E. Sample Road, Pompano Beach, FL 33064

VOICE: (954) 942-1882 FAX: (954) 781-1282

CGC#: 051895 FED ID#: 650386560

[www.access-ability.com](http://www.access-ability.com)

September 16, 2004

Fuller, Fuller & Associates  
12000 Biscayne Blvd  
North Miami, FL 33181

Re: Marriott of Springfield  
1500 Main Street  
Springfield, MA 01115

Dear Mr. Fuller,

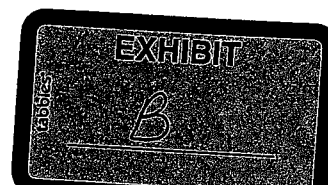
Access 4 All, Inc. has requested that an investigative report on ADA violations for the above-referenced property be sent to you. Obvious areas of non-compliance exist. We observed and noted the following:

### **Parking**

1. The disabled use spaces do not have clear and level access aisles provided, violating Sections 4.1.2 and 4.6.3 of the ADAAG.
2. The signs designating the disabled use spaces are not posted at sufficient heights, in violation of Section 4.6.4 of the ADAAG.
3. The accessible parking spaces are improperly dispersed and marked as per US Code 23, Section 109D (striped in white and prominently outlined in blue), and in violation of Section 4.6.2 of the ADAAG.

### **Entrance Access and Path of Travel**

1. There are ramps at the facility that do not have level landings and/or contain excessive slopes, side slopes or cross slopes in violation of Sections 4.8.2, 4.8.4 and 4.8.6 of the ADAAG.
2. There are rises at the thresholds of entrances at the facility in excess of  $\frac{3}{4}$  of an inch, violating Sections 4.5.2 and 4.13.8 of the ADAAG.



**Access to Goods and Services**

1. There are counters throughout the facility in excess of 36", in violation of Section 7.2(1) of the ADAAG.
2. There are self-service areas with dispensers whose controls are outside of the reach ranges prescribed in Section 4.2 of the ADAAG.

**Accessible Guest Rooms**

1. The rooms designated for disabled use do not provide a 36-inch clear floor space on both sides of the bed in violation of Section 9 of the ADAAG.
2. There are an insufficient amount of compliant disabled guest rooms available violating several sections of the ADAAG.
3. There are areas for storage provided without the clear floor space prescribed in Sections 4.2 and 9 of the ADAAG.
4. The rooms designated for disabled use do not provide a roll-in shower for use by the disabled, violating Section 9 of the ADAAG.
5. The grab-bars in the restroom provided in the room designated for disabled use do not comply with the requirements prescribed in Sections 4.17.6 and 4.26 of the ADAAG.
6. The fixtures in the disabled use room have controls that are not easily operated with a closed fist in violation of the ADAAG.
7. The disabled rooms are not dispersed among the various classes of sleeping accommodations in violation of Section 9.1.4 of the ADAAG.

**Indoor Pool**

1. There is no water access for a wheelchair user in violation of Section 9.1.1 of the ADAAG
2. The gate to gain entry to the pool area is not operable with a closed fist in violation of Section 4.13.9 of the ADAAG

A more detailed follow up report should be performed in the presence of the property owner or manager. There may be other violations of the Americans with Disabilities Act that may be revealed in said inspection.

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## ***GARY W. DIX, C.P.A, C.V.A***

### ***PROFILE***

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#### ***Personal and Education:***

Bachelor of Business Administration  
Bernard Baruch College of the City University of New York - 1969

#### ***Professional Background:***

Mallah, Furman and Company, P.A. - 1994

- Merged and named a Director in 1994

Silver, Dix and Hammer, C.P.A. - 1979 to 1993

- Founding partner of a local C.P.A. firm

Harris, Kerr, Forster & Company - 1975 to 1978

- Manager, Tax Department
- Responsible for tax planning and compliance

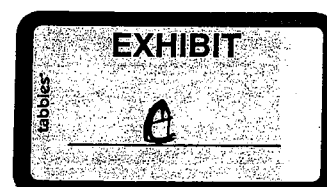
Deloitte, Haskins & Sells - 1970 to 1974

- Staff Accountant
- Two years on Audit Staff
- Two years on Tax Staff
- Promoted to Senior Accountant
- 

#### ***Professional Experience:***

A member of the Tax Department of Deloitte, Haskins & Sells and Harris, Kerr, Forster & Company.

As a Director at Mallah, Furman and Company, Mr. Dix has specialized in business consulting, valuations, financing arrangements and tax planning. Since 1997, Mr. Dix has been the Director in Charge of The Business Valuation Division of Mallah, Furman and Company, P.A.



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## ***GARY W. DIX, C.P.A, C.V.A***

### ***PROFILE***

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The Firm's valuation engagements encompass family limited partnerships, real estate ventures, wholesale distributors, medical practices, other professional practices, restaurants and retail establishments.

#### ***Professional Licenses:***

- Certified Public Accountant
- Certified Valuation Analyst

#### ***Outside Professional Activities:***

Outside professional activities have included various seats on Board of Directors relating to the following:

- Member of the Board of Directors: Perry Ellis International, Inc., A NASD listed company; Chairman, Internal Audit Committee
- Member of the Board of Directors of the Dr. John T. Macdonald Foundation, Inc.
- Member of the Board of Directors of Westview Country Club
- Founding Shareholder and Director of the Universal National Bank, a Dade County Community Bank (sold in 1997)